



U.S. Application No.: 10/667,463

Docket No.: D-1521

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
	:	Confirmation No.: 9486
Masayoshi KUMAGAI et al.	:	
	:	
U.S. Application No.: 10/667,463	:	Group Art Unit: 3616
	:	
Filed: September 23, 2003	:	Examiner: F.M. Fleming
For: Airbag Apparatus	:	

December 13, 2005

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the final Office Action dated September 21, 2005, please conduct a pre-appeal brief review of the above-identified application.

Arguments

Applicants acknowledge with gratitude the allowance of claims 8-13.

But, all of pending claims 1-13 should be allowed. The application should be allowed because the rejection presented in the final Office Action contains clear error. Specifically, the rejection under § 102(b) is based on a limitation not met by a reference.

Applicants' claim 1, directed to an airbag apparatus, defines in pertinent part "a check valve disposed in the communicating

portion for preventing the gas from flowing form [sic, 'from'] the lower chamber to the upper chamber."

In the Claim Rejections section of the Office Action (page 2, paragraph 2), the examiner states in pertinent part that Eyraier discloses "a check valve 24." In the Response to Arguments section of the Office Action (page 3, paragraph 4), the examiner asserts that "[i]n response to the Applicant's argument that prior art U.S. Patent 5,722,685 to Eyraier dividing seam 24 does not constitute a check valve, by definition a check valve also means a lid, plug or cover." The examiner also asserts that "[t]he term has several definitions, however the seam 25 of Eyraier functions as a 'valve', that is preventing a flow."

First, Applicants direct the reviewers to the remarks in Applicants' response filed June 16, 2005, and specifically, to the arguments for patentability over Eyraier at response page 4, lines 4-16.

The clear error is that the § 102(b) rejection is based on a limitation not met by the applied reference. Eyraier discloses a "dividing seam 24" (col. 2, lines 37-38), not Applicants' claimed "check valve."

Claim interpretation doctrine recognizes that a word should be given its "ordinary" meaning unless a different meaning is clearly indicated in the specification. In fact, the USPTO's court of review, the U.S. Court of Appeals for the Federal Circuit, has repeatedly held that there is a "strong" or "heavy" presumption in favor of ordinary meaning. See, e.g., *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812 (Fed. Cir. 2002).

In determining the ordinary meaning of a claim term, courts often rely upon a general dictionary. See *Inverness Medical Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365,

1369, 64 USPQ2d 1926 (Fed. Cir. 2002) ("It is well settled that dictionaries provide evidence of a claim term's 'ordinary meaning'.") According to one general dictionary frequently cited by the Federal Circuit, the definition of "check valve" is "a valve that permits flow in one direction but prevents a return flow." *Webster's Third New International Dictionary*, 382 (1993).

When a term is technical in usage, a court may also rely upon a technical treatise. See, e.g., *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 39 USPQ2d 1573 (Fed. Cir. 1996). According to one renowned technical treatise, "[a] check valve permits flow in one direction only," and "[i]t is opened by the pressure of the fluid in the desired direction." W.L. McCabe and J.C. Smith, *Unit Operations of Chemical Engineering*, McGraw-Hill Chemical Engineering Series, 178 (3d ed. 1976).

The examiner states that "by definition a check valve also means a lid, plug or cover." But, the definition proffered by the examiner is different from the standard definitions provided in the above-identified general dictionary and technical treatise. And, just as importantly, the examiner provides no attribution of the source of the definition.

Secondly, a court may also undertake an examination of the written description portion of the specification to ascertain whether to limit the meaning of a claim term. That is, when the claim language or context calls for further inquiry, the court consults the written description for a clear intent to limit the invention to a particular embodiment. In the present case, not only does the claim language not call for further inquiry, but there is no usage in the written description that would attribute any meaning to the term "check valve" other than its ordinary meaning. See, e.g., specification page 12, lines 11-18, and the

disclosure of "so as to close the port to prevent the gas from flowing out".

Thirdly, a court may also undertake an examination of an application's prosecution history to ascertain whether to limit the meaning of a claim term. In the present case, however, there is nothing in the application's prosecution history to indicate that Applicants intended any other meaning for the term "check valve" than its ordinary meaning. In fact, the pertinent portion of claim 1 remains in its original as-filed form, i.e., employing the terminology "a check valve."

The term "check valve" should, therefore, be accorded its ordinary meaning.

And, since claim 1 defines an airbag apparatus having "a check valve," it is not anticipated by Eyraier, which discloses simply a "dividing seam 24." Eyraier's dividing seam is not a check valve, which, by definition, permits flow in one direction, but prevents a return flow.

The final rejection, therefore, is in clear error because it is based on a limitation not met by the applied reference.

The proposed amendment for correcting a clerical error in claim 1 is attached herewith.

In view of the above, Applicants respectfully submit that this application is in immediate condition for allowance.

Respectfully submitted,

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Proposed Amendment

The listing of claims will replace all previous version, and the listing of claims.

Listing of claims

1. (currently amended) An airbag apparatus for protecting an occupant in a vehicle, comprising:

an airbag having an occupant-side surface facing the occupant and a vehicle-body-side surface opposite to the occupant-side surface when the airbag is inflated, and at least an upper chamber and a lower chamber separated from each other,

a gas generator disposed in the airbag for generating gas to inflate the airbag,

a communicating portion between the upper and lower chambers, and

a check valve disposed in the communicating portion for preventing the gas from flowing ~~from~~ from the lower chamber to the upper chamber.

2. (previously presented) An airbag apparatus according to claim 1, wherein said occupant-side surface and said vehicle-body-side surface are joined at peripheries thereof to form a joint line, and said upper and lower chambers are defined by a partitioning joint line extending linearly, said partitioning joint line having one end away from the joint line to form the communicating portion and connecting a part of the check valve to the occupant-side surface and the vehicle-body-side surface.

3. (original) An airbag apparatus according to claim 2, wherein said gas generator is located in the communicating portion so

that an upper end of the gas generator extends slightly outwardly from the communicating portion.

4. (original) An airbag apparatus according to claim 1, wherein said communicating portion forms a gas distributor retaining the gas generator therein and has a first outlet port for guiding the gas from the gas generator to the lower chamber and a second outlet port for guiding the gas from the gas generator to the upper chamber, said second outlet having an opening smaller than that of the first outlet port;

5. (original) An airbag apparatus according to claim 4, wherein said gas distributor is formed of a sheet wrapping around the gas generator, and said first outlet port extends toward the lower chamber lower than the gas generator to form the check valve.

6. (original) An airbag apparatus according to claim 4, wherein said gas distributor is formed of the sheet rolled in a cylindrical shape with edges thereof overlapped, and said gas generator is fixed with a mounting member passing through the edges.

7. (original) An airbag apparatus according to claim 4, further comprising a bent unit formed in the upper chamber for allowing the gas to flow from the upper chamber to an outside of the airbag.

8. (original) An airbag device for protecting an occupant in a vehicle, comprising:

an airbag having at least upper and lower chambers, at least one separating means for separating the upper and lower chambers,

and a through hole with a periphery sealed by sealing means connected to the separating means,

a gas generator disposed in the airbag for generating gas to inflate the airbag,

a gas distributor disposed in the airbag and containing the gas generator therein, said gas distributor having a first outlet port for guiding the gas to the lower chamber and a second outlet port for guiding the gas to the upper chamber, and

a clamp member disposed around the gas distributor outside the airbag and passing through the through hole for pressing the airbag against the gas distributor.

9. (original) An airbag device according to claim 8, further comprising a middle chamber disposed in the airbag between the upper chamber and the lower chamber.

10. (original) An airbag device according to Claim 9, wherein said gas distributor further includes a third outlet port for guiding the gas to the middle chamber.

11. (original) An airbag device according to claim 10, wherein said airbag has a plurality of through holes with peripheries thereof sealed by sealing means connected to separating means, said middle chamber being disposed between the separating means, said gas distributor having a third outlet port between the separating means.

12. (original) An airbag device according to claim 9, further comprising a communicating portion disposed in the airbag for communicating the upper chamber and the middle chamber and for

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guiding the gas to the middle chamber from the gas generator via the upper chamber.

13. (original) An airbag device according to claim 11, wherein said separating means are connected to the sealing means of one of the through holes.